

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare Department – Appeal Petition filed by Sri Murala Venkata Rao, S/o Uma Maheswara Rao, Occ: Technician Grade-1, C&W, East Coast Railway, Visakhapatnam, against the proceedings No. Rc.1508/2001, C1, dt.30.09.2007 of the District Collector, Srikakulam, under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) - Regulation of Issue of Community Certificates Act, 1993 (AP Act No.16/1993) – Appeal Petition dismissed – Orders -Issued.

SOCIAL WELFARE(TW.CV.2) DEPARTMENT

G.O.MS.No. 98

Dated: 02-07-2018

Read the following:

1. Proceedings of the District Collector, Srikakulam, Rc.1508/2001, C1, dt.30.09.2007.
2. Appeal Petition filed by Sri Murla Venkat Rao received through Regd. Post dt.18.12.2007.
3. Govt. Memo No. 120/CV.2/2008, dt.22.01.2008.
4. Orders of the Hon'ble High Court of A.P in W.P.No.1287/2008, dated 04.02.2008 filed by Sri Murala Venkat Rao S/o. Uma Maheswara Rao.
5. From Sri M.Venkata Rao, representation dt: 26.02.2008.
6. Govt. Memo. No. 120/CV.2/1008, dt.15.03.2008 .
7. From the District Collector, Srikakulam Lr.Rc.No.1508/2001, dated:15.04.2010 & 11.05.2010.
8. Govt. Memo. No. 120/CV.2/1008, dt: 17.01.2013, 24.06.2015, 17.11.2015 & 01.05.2018.

<><><>

ORDER:

In the reference 1st read above, the District Collector, Srikakulam has issued orders cancelling ST-Bentho Oriya caste certificate of Sri Murala Venkata Rao, S/o Uma Maheswara Rao, presently working as Technician Grade-1, C&W, East Coast Railway, Visakhapatnam.

2. In the reference 2nd read above, Sri Murala Venkata Rao, S/o Uma Maheswara Rao, has filed an Appeal Petition before the Government, against the Proceedings of the District Collector, Srikakulam. After examining the said Appeal Petition, Government have rejected the said appeal petition as per the provisions under Act 16 of 1993 as the appeal petition is time barred.

3. In the reference 3rd read above, Sri Murala Venkata Rao, S/o Uma Maheswara Rao has filed W.P.No.1287/2008 before the Hon'ble High Court, against the Govt. Memo No.120/CV.2/2008, dt.22.01.2008 & proceedings of the District Collector, Srikakulam, dated 30.09.2007. The Hon'ble High Court of Andhra Pradesh, Hyderabad while disposing the said W.P., on 04.02.2008 has directed the Government to treat that the appeal filed by petitioner against the order dated 30th September 2007 is filed within the time frame contemplated under Section 7(2) of the Act and decide the appeal on its own merits. It is also open for the respondents to consider the application of the petitioner for interim orders, if any, pending consideration, on its own merits. The interim order passed by this Court on 28th of January 2008, suspending the operation of the order passed by the District Collector, dated 30th of September 2007, shall be in force for a period of four weeks from the date of receipt of the order. In the meanwhile, it is open to the petitioner to move the appellate authority for passing of interim orders.

4. In the reference 5th read above, the appellant has filed a representation before the Government as per the above directions of the Hon'ble High of Andhra Pradesh, Hyderabad and prayed to grant stay on the operation of the proceedings of the District Collector, Srikakulam dated 30.09.2007, pending disposal of his appeal.

5. In the reference 6th read above, after examining the said Appeal Petition, Government have admitted the Appeal Petition and granted stay on the proceedings of the District Collector, Srikakulam and called for the parawise remarks and connected records from the District Collector, Srikakulam in the reference 6th read above.

[P.T.O]

6. In the reference 7th read above, the District Collector, Srikakulam has furnished the Parawise remarks and the connected records on the Appeal Petition filed by Sri Murala Venkata Rao, S/o Uma Maheswara Rao.

7. The said Appeal Petition has been posted for hearing on 21.01.2013, 25.07.2015, 28.11.2015 & finally on 19.05.2018 and the same has been informed to the Appellant and the Counsel for the Appellant in the reference 8th read above, and they were requested to attend for the hearing along with all Documentary Evidences/ Certificates in support of the community claim, failing which, it will be construed that there is no explanation what-so-ever to furnish in the matter and that the case will be decided based on the material available with the Government.

8. After hearing both the sides and on perusal of the records/ the copies of evidences/academic record/ grounds filed by the Appellant/ the parawise remarks submitted by the District Collector, Srikakulam and proceedings of the District Collector, Srikakulam, dated 30.09.2007 the Appellate Authority is observed that :

- I. The appellant in his grounds has stated that the District Level Scrutiny Committee has not given opportunity to the individual and not perused the records represent his case before DLSC. The Committee had failed to give the applicant an opportunity to be assisted by a lawyer since he is failed Intermediate candidate and is unable to understand English as well as the purport of the documents collected by it. The District Collector ought to have seen that G.O.Rt No. 371, dated 28.5.1992 clearly reads in para 8 that documentary evidence was furnished like pattas of 1331 fasli (1920-21) and electoral rolls of 1951 where persons belonging to the Ex Cheekati Estate villages which are forming part of the area inhabited by the people who are claiming have to be accepted that the persons who are locally referred to as "Odis" in Srikakulam District but are became "Bentho Oriyas" belong to Bentho Oriya which in course of time became Bentho Oriya". This clearly proves that the Electoral Rolls of the year 1951 describe the ancestors of the Appellant as Bentho Oriya. The collector, ought to have seen that in the Electoral Rolls of 1951 the ancestors of the appellant were shown as belonging to "Bentho Oriya" community as stated in the G.O.Rt.No.371, dated 28.5.1992. The Collector, ought to have seen that the report of MRO, Tekkali only states that the name of the appellant was not found in the issue register of caste certificates maintained by the MRO, Tekkali but it may be noticed that Patha Naupada is a hamlet of Naupada RS which is part of Santhabommali Mandal and as such his report cannot be the basis to conclude that the appellant does not belong to Bentho Oriya community.
- II. The District Level Scrutiny Committee has observed that Chairman, DLSC has obtained the enquiry reports of the following, officers in addition to the report of the Mandal Revenue Officer, Tekkali.(1) District B.C. Welfare Officer, Srikakulam, (2)Superintendent of Police, Srikakulam, (3)Dy. Director, SW, Srikakulam, (4) District Tribal Welfare Officer, Srikakulam and in addition to the above, the Birth and death registers of the Patanaupada, Dasaradhi Peta, Yamalapeta, Ijjuvaram Village for the period from 1929 to 1972 have got verified by the MRO, Tekkali. The above facts were mentioned in the impugned proceedings of the Collector.Hence the Contention of the petitioner that the District Level Scrutiny Committee has merely filed its report without producing the documentary evidence is not correct and also in regard to G.O.Rt.No.371, dated 28.5.1992 the said G.O. is not in force. It is submitted that Govt. in Memo No.22427/CV.2/93, dated 3.5.1999 have cancelled all existing orders in this issue. Therefore the G.O.Rt.No.371, dated 28.5.1992 is deemed to have been cancelled and hence there is no need to refer the said G.O. in any matter. The Govt. Memo No.22427/CV.2/93, dated 3.5.1999 have directed that if the certifying authority is not able to establish the indemnity of the claimant beyond reasonable doubt on the basis of

[Contd..]

enquiries conducted by them, the concerned certificate issuing authorities may issue Benthoriya ST caste certificate to those persons whose names are found recorded in the electoral rolls of 1951 as Benthoriya of their direct descendant. Hence the contention of the appellant is not valid. The residence of the individual is Pathanaupada. Hence the Mandal Revenue Officer, Tekkali has verified the records of the Pathanaupada. There is no iota of evidence to prove that the appellant belongs to Benthoriya Caste which belongs to S.T. Based on the findings of the DLSC, the appellant has cancelled appellant's caste certificate.

- III. Under section 6 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No.16/1993) the burden of proof lies on the Appellant only.
- IV. The Appellate Authority has observed that during the course of hearing of the case, the appellant not present and there is no representation for the appellant and proof of service of notice is filed indicating that the notice served on appellant by concern as such the date of hearing is aware by the appellant but he has not turned up and there is no representation on his behalf, on seeing the record the same is pending since several years as such no other go the same is ordered for orders on merits in the absence of the appellant. On verification of the documents and the grounds of appeal and Para wise remarks as well as the other documents and material available on the record it is noticed that the contention of the appellant that he has not given opportunity in the enquiry by the lower authority and the said ground is not tenable in the eye of law since as seen from the record several opportunities were given to the appellant to substantiate his contention. It is observed that as seen from the record that the matter pending since more than 10 years for hearing and several opportunities were given to the appellant to substantiate his contention and to produce evidence that he belongs to Benthoriya ST but he did not choose to produce any evidence and simply stating that he had not given opportunity to hear that itself shows that he has no evidence to show that he belongs to Benthoriya ST. That as seen from the record that the contention of the appellant that he has not given opportunity to prove his claim and the people like him are residents of a few villages and they have all been considered as Benthoriyas and all the voters and their relatives of the village are treated as belonging into Benthoriyas from where his mother hails. It is observed that the individual was given reasonable opportunity to prove that his parents or grandparents are belongs to ST but the individual failed to prove the same. It is also observed that the individual obtained the caste certificate from the Mandal Revenue Officer, Santhabommali in the year 1999 as if he belongs to Benthoriya Community, which is not valid since the competent person as per rules in vogue by that time is Revenue Divisional Officer, Tekkali. That as per the Act 16/1993, the burden of proof lies on the appellant, thus it is the responsibility of the appellant to produce necessary evidence and documents to claim the same. In the instant case that the appellant except stating that he had not given opportunity at the time of hearing failed to produce any evidence to substantiate his contention. As seen from the record the lower authority passed the order after reasonable appreciating the evidence available on record as per law which deserves no interference. Hence it is apparent that the appeal is devoid of any merits and there is no infirmity either in the findings of DLSC or the learned District Collector, Srikakulam. That taking consideration of the above and the material available on the record that it can be concluded that the lower authority passed the order as per law which does not deserve any interference.

[Contd..]

::4::

9. In view of the several reasons recorded in the paras supra, the Government, in exercise of the powers conferred under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (Act No.16 of 1993), decide that the appeal petition filed by Sri Murala Venkata Rao, S/o Uma Maheswara Rao,, does not deserve any interference. Hence, Proceedings of the District Collector, Srikakulam issued vide Rc.1508/2001, C1, dt.30.09.2007, is hereby upheld and the Appeal Petition filed by Sri Murala Venkata Rao, S/o Uma Maheswara Rao, is hereby dismissed and the interim stay granted earlier stands vacated.

10. The District Collector, Srikakulam is directed to take necessary consequential action in the matter.

11. The records (containing Rc.1508/2001, pages: 1-222 CF) received from the District Collector, Srikakulam through in the reference 7th read above, are returned herewith in original to the District Collector, Srikakulam and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**S.S. RAWAT
PRINCIPAL SECRETARY TO GOVERNMENT**

To
The District Collector, Srikakulam.
(with original records) (BY RPAD)

Sri Murala Venkat Rao, S/o. Uma Maheshwara Rao,
Technician Grade-I,
Carriage & Wagon (C&W) Department, East Coast Railway,
Visakhapatnam.

D.No.38/19/32/1, Jhoythi Nagar,
Marripalem, Visakhapatnam 530018.

The General Manager, East Coast Railway,
Visakhapatnam

Copy to:

The Director, TCR& TI, AP, Amaravathi.

The PS to M(SWE & TWE).

The PS to Principal Secretary(SW&TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER